# Rhode Island Historical Society Collections

Vol. XXIII January, 1930 No. 1

Head of an espontoon, a sort of halberd or pike, which was carried by the commissioned officers of the Rhode Island militia in the eighteenth century. *In the Society's museum.*

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RHODE ISLAND HISTORICAL SOCIETY

COLLECTIONS

Vol. XXIII January, 1930 No. 1

CLAUDE R. BRANCH, *President* GILBERT A. HARRINGTON, *Treasurer*
HOWARD W. PRESTON, *Secretary* HOWARD M. CHAPIN, *Librarian*

The Society assumes no responsibility for the statements or the opinions of contributors.

# Foreclosure of Mortgage by Suit of Trespass and Ejectment

*By* OSCAR F. STETSON

In examining records of the Superior and Supreme Courts of Bristol County recently, covering the period from 1740 on, we discovered a large number of suits for Trespass and Ejectment where the sum named in the ad damnum seemed unusually large, so large, in fact, that is raised the question as to how such an amount could be involved in a suit of this nature at that period of the history of the state, especially as the description of the land in question would not seem to warrant the amount of money named. Often a house lot of a quarter of an acre with a dwelling on it would carry an ad damnum of four or five thousand dollars.

In an examination of the papers filed with the case we found the explanation. There, filed in evidence, was a warranty deed with the following condition written at the

bottom of the instrument: "The condition of this conveyance is a note of hand given by the grantor to the grantee, which, when and if paid, renders this conveyance null and void and of no effect."

Thus the suit for Trespass and Ejectment was the popular way of that time for foreclosing a mortgage. It will be noted that there was no specification in the warranty deed, or mortgage deed as it really was, as to foreclosure; no time noted for the payment of the "note of hand"; no default clause or period of default when foreclosure action could be commenced; no advertising required; no sale demanded, either public or private, on the premises or elsewhere; in fact, no one of the requirements that make foreclosure of a mortgage legal to pass title today.

In other words, Hezekiah Usher mortgaged his property to William Richardson, thus conveying to Richardson good title by a warranty deed with a condition of redemption so worded in its breadth that Richardson could seize the premises at any time that he pleased, depending only on the time named in the "note of hand." And if the "note of Hand" was a demand note, the mortgagor was entirely at the mercy of the mortgagee, the mortgagee having perfect right to take the premises mortgaged, at his pleasure. At that time, whenever it was, that the mortgagee concluded that he wished to have the actual possession of the premises for which he held a warranty deed, therefore he came into Court and recited that he had a warranty deed of the property in question, and produced the deed in evidence, and stated that the conditions of the deed had not been fulfilled by the mortgagor, and in consequence the mortgagor was a trespasser on his, the mortgagee's, premises and he wanted him ejected. The mortgagor, not having paid his note, and being either unable or unwilling to do so at the time, had no answer, the evidence of the deed coupled with the lack of evidence of payment of the "note of hand" being conclusive proof against him. Therefore there was no reason for his appearance in Court

and he was adjudged in default and the Sheriff was directed to proceed to eject him from the premises and deliver the property to the mortgagee who already held a proper deed for it. The average cost of this proceeding appears to have been about $4.85.

The following is an abstract of an actual case taken from the Bristol record:

Bristol January Term 1767.
William Richardson of Newport
vs
Hezekiah Usher of Bristol
Action of Trespass and Ejectment.
Recites a certain lot of land in Bristol containing by estimation 3/4 acre with a dwelling house and other buildings thereon standing and bounded:
westerly on Hope Street
northerly on King Street
easterly on land of John Howland
southerly partly on land of John Waldron, now of Billings Throop, and partly on land of Peleg Barker.
Ad damnum £120.
Defendant suffered default.
Judgment for the Plaintiff to recover the premises.

In the papers filed with the case is the original deed with the "note of hand" condition making it a mortgage deed, from Hezekiah Usher to William Richardson of Newport for £1550 old tenor money (in the margin is written "£66-8s-1½d lawful money"). This deed is recorded in Bristol Land Evidences, book 4 at page 96.

It will be noted that all this action has taken place in the Court and that change of ownership has occurred, or perhaps we should say change of possession has occurred, without any necessary record on the Land Evidences. The title examiner is faced with the fact that a mortgagee is deeding out certain premises as having good title without any Land Evidence record of either foreclosure of his

mortgage or a deed of sale to him by the mortgagor who was the last record owner. This has led many an examiner to conclude that there must have been an unrecorded deed of some form. Much anxiety has arisen over this cloud in title, and much time and money has been spent in hunting up mortgagors heirs and securing proper releases.

We examined carefully the Court records from 1740 to 1903 and found upwards of two hundred fifty of these foreclosures in Bristol County coming down as late as the middle of the eighteen hundreds. It is interesting to note that in consulting a number of practicing attorneys in the state of all ages, not one knew that such a practice ever existed in Rhode Island.

## The Samuel Sewall School Land and the Kingston Academy

*By* William Davis Miller

On the fourth day of February, 1695[1] Samuel Sewall of Boston and Hannah, his wife, daughter of John Hull, the mint master and one of the original Pettaquamscutt Purchasers, "for and in consideration of the special trust and confidence that they have and repose in . . . John Walley . . . and for Love, Kindness and Goodwill which they bear to the Inhibitants of the Town of Pettaquamscutt, in the Narragansett Country, otherwise called King's Province, as well English as Indians and their posterity . . . and towards the encouragement of Literature and good Education and the maintenance of a Learned, Sober and Orthodox School Master in the said Town . . ." gave, under trusteeship of John Walley, five hundred acres of land, being the western portion of Sewall's lot numbered four in

[1] *North Kingstown Land Evidence*, Book 2, p. 167.

the north western part of the Pettaquamscutt Purchase, the eastern portion of which Sewall deeded to Harvard College, a year later, and from the benefits of which the Sewall Scholarships are still awarded.

The revenue from the School lands was to be collected by Walley from which Sewall was to be paid sixpence and the remainder to be employed in "procuring, settling, supporting and maintaining" the beforementioned much-qualified school master who was to teach "the children and youths of the ... Town of Pettaquamscutt, as well English there settled, or to be settled, as Indians, the Aboriginal Natives and Proprietors of the Place, to read and write the English Language and the Rules of Grammar . . . ." They then provided that the choice of the school master and the site of the school rest in Samuel Sewall and his wife, during their lives, and after their death, in the Minister of the Third Church in the Town of Boston and the Town Treasurer for that Town.

Judge Sewall died January 1, 1729-30, and, his wife Hannah having predeceased him, there is no evidence that prior to his death he had exercised the right in the choice of a school master or in the site for the school building. The duties, therefore, fell upon the Minister of the Third Church and the Town Treasurer for Boston.

Major John Walley, in whom the trust rested, had also died before Judge Sewall. It would appear that his son and executor, John Walley, continued the trust but after Judge Sewall's death, he allowed, either because of disinterest on his part or because of the lack of industry of the tenant or tenants, the lands to fall into a deplorable state of neglect. As a result the Town of North Kingstown in 1732[2] appointed William Spencer and Nicholas Gardner to view the land and report its condition. The report, dated November 27, 1732, states that the land was leased in 1718 to Benoni Sweet of North Kingstown, for fourteen

[2]Copy in Potter Papers.

years, who evidently was far from a good tenant for the Spencer and Gardner report stated, "We find on Sd. Land a Small poor Orchard with Eighty-Eight Small Aple Trees and A very poor fence about them, and down to the Ground in Several places, and in Said Orchard a Small Stone Chimny but no house on Sd. Land; and to the Clearing of Sd. Land we find Some that has been plowed but the brush is got up in Bunches . . . we find the Timber Cutt and gon off Said Land in Spots, and as to fence on Said farme we finde none of any Vallew . . . ."

It is not to be wondered at, therefore, that Judge Sewall's son, Samuel, in 1736 wrote to the Reverend Doctor Joseph Torrey,[3] the Congregational Minister at Tower Hill, saying "My Hon'd Fathers Gift of 500 Acres of Land for the Promotion of a School I have been much concerned in my mind about the Settlement of it. I did the last Week go with Mr. Hammon to Mr. Walley & we find by discoursing with him that he will not meddle with it nor have anything more to do with it. I told him I would take a Letter of Attorney from him & act in the Affair. He declined it & said he would assign it over to me if I would see him satisfied what he had Expended which is Nine or Ten pounds. I have promised to give him satisfaction. He with Majr. Walley's Heirs will assign it over to me & my Heirs—" Having so succeeded in obtaining control of the land young Sewall leased it to a "Mr. Astin"[4] for fourteen years upon consideration that he build a house and clear four acres every year until fifty acres of land be cleared and fenced in. Sewall concludes with the hope: "I shall rejoyce to hear that what is done may be to satisfaction & that it may be in order to make it profitable for the end assigned."

Sewall did not remain in the Colonies to see his hope fulfilled for on July 1, 1775, being an ardent Tory, he

[3]Original in the Potter Papers.
[4]Austin.

left for England. For this reason in 1780 process was commenced before the Supreme Court to have the School Lands confiscated as being the property of Samuel Sewall, a Tory refugee. The process was dismissed the following year, April 1781, on the ground that the beneficial estate in the land was in the people of the Pettaquamscutt Purchase.[5] The title of the land having been assured, on May 30, 1781, Joseph Eckley, Minister of the Third Church in Boston and David Jeffries, Treasurer of the Town of Boston wrote the following resolution:[6] "Whereas by a deed from Samuel Sewal Esqr of Boston & Hanah his wife bearing date 4 February, 1695, for the purpose of settling, supporting & maintaining a learned, sober & orthodox school master in the Town formerly called Pettasquamscut, it appears that we the subscribers are authorized to appoint a place where the school house may be built, & it appearing to us that it may be convenient that it should be near the meeting house, we do hereby appoint that the School house be erected on the lot of land formerly left by Samuel Sewal & Hannah, his wife, for the purpose of building a meeting House in the said town of Pettasquamscut.

Joseph Eckley, Minister
Of the Third Church in Boston
David Jeffries, Treas[r]
of the Town of Boston.

Boston 30 May 1781"

This land, containing from one to one and one half acre, was deeded[7] by the Sewalls to Nathaniel Niles as trustee, on "this Three & Twentieth day of September

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[5]Note by Elisha R. Potter, Jr.

[6]This resolution is endorsed "From Dr. Torrey." The original from the Potter Papers.

[7]*South Kingstown Land Evidence*, Book II, pp. 153-154.

Anno Domini one thousand Seven Hundred and Seven Annoque Regni Anne Regine Anglia &c Sexto". It is situated on Tower Hill on the easterly side of the Post Road and on the southerly side of the road leading down the hill to the Pettaquamscutt or Narrow River, or as designated in the original deed as the road "across the Hill Toward the Ferry." There is but slight trace of the building which stood there but the old grave yard marks the place. Sewall referred to the proposed gift in his diary under September 20, 1706, a year before the deed.

This small lot of land has, on several occasions, been confused with large tract of three hundred acres laid out by the Pettaquamscutt Purchasers in 1668 and which, for fear of naming a specific denomination, the Purchasers set down on the plat and records as simply "to the Ministry". This caution, in fact, provoked exactly what it was intended to prevent, a long controversy for possession between the Church of England and the Congregational Church. However, the Purchasers did accomplish the avoidance of making a difficult decision when the land was first laid out. This land was situated several miles to the southwest of Tower Hill, near Worden's Pond, and the woods upon it are still known as the "Ministerial Woods". Sewall makes mention of this land in his Letter Book.[8]

The decision of Eckley and Jeffries was carried out forthwith, a school house built, and school kept there for over thirty-eight years. Among the "learned, sober and orthodox" schoolmasters to receive the appointment were: Constant Southwick, Increase Hewit, John Hazard, William Nichols, Robert F. Noyes, Benj. Hull and Elisha R. Potter, Sr.[9]

The meagerness of the interest from the endowment is

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[8]*Sewall's Letter Book*, Vol. II, p. 113. (*Massachusetts Historical Collections*, Vol. VI.)

[9]From Judge E. R. Potter's notes and also *A Statement of Facts in Relation to the Funds of the Kingston Academy*. Providence, 1836.

shown from the terms accepted by Elisha R. Potter to teach in the year 1785. "The Terms which the Subscriber proposes Teaching a School at the School House on Tower Hill are as follows: If there are twenty-five scholars subscrib'd for the price will be 12 / per Quarter and if less it will be 15/. Wood and whatever will render the School House convenient to be supply'd by the Employers, and the subscriber to board himself.

Elisha R. Potter"[10]

On the reverse, Potter notes that he commenced to teach on April 12th, 1785, and from further notes it is evident that by June 7th he had twenty-four scholars.

This school, however, was not the first in the Purchase, for a short time prior to 1759 a school house was built in the village of Little Rest (now Kingston) on Little Rest Hill. This was built on the land of Robert Potter on the north side of the main road passing through the village where the present Post Office now stands. On October 20, 1759, Robert Potter deeded the land, thirty by twenty feet, to a group of the leading men of the community for school purposes. The deed states that the school house then stood on the land. In 1787 we find Elisha Potter teaching there, after his experience on Tower Hill, with twenty-three pupils, including the two sons of John Waite, the silversmith, and Powel Helme.[11]

As a result of a petition to the General Assembly in 1752 the court house of King's County had been abandoned at Tower Hill and a new one built at Little Rest in 1756. Little Rest soon became the leading town in the County, and Tower Hill suffered as a result, many of its inhabitants removing to, and building in, the larger village. It is understandable, therefore, that Joshua Huntington, the then Minister of the Third Church in Boston, and the

[10]This was Elisha R. Potter, Senior. Original in Potter Papers.

[11]*South Kingstown Land Evidence*, Book 6, p. 110, and notes by Judge Potter.

Treasurer of that town, Andrew Sigourney, should decide to transfer the Sewall School from Tower Hill to Little Rest. One condition was imposed: that the people of Little Rest would procure a person to settle in the ministry there "and teach the school at the same time."[12] It is evident that a promise to fulfill this condition was made and kept, for the school was removed to Little Rest in 1819 and a year later the present church built, providing, thereby, suitable facilities for the person selected to act as a teacher, both spiritual and temporal.

In 1823 the committee of this school petitioned the General Assembly for a charter under the name of The Trustees of the Pettaquamscutt Academy. The charter was given the May Session, and the Pettaquamscutt Academy, later to be known as the Kingston Academy, came into being.

(*To be continued.*)

## A German Gardener at Newport in 1754

*Communicated by* Mrs. Lewis A. Waterman

The following nineteenth century translations of the letters of recommendation of a German gardener, named Johann Caspar Öhlman are of Rhode Island interest because Öhlman came to America and settled in Newport where he married Ruth Hart on September 16, 1766. The record of this marriage appears in the Newport Vital Records, but in the printed copies the name is mistranscribed Oslman.

From still another angle these letters open up the speculation as to how much this German gardener influenced the development of our colonial gardens. Did other

[12] Judge Potter's Notes.

skilled German gardeners emigrate to New England, and has any trace of this German influence been found in our early gardens.

"His Highness and most powerful Prince, Frederic August, King of Poland, Grand Duke of Lithuania, Reussen, Preussen, Mazovien, Samogitien, Kyovien, Volhinien, Padolien, Padlachien, Lifland, Smolensko, Severien, Schernicovien, Duke of Sachsen, Julich, Cleve and Berg, Engern and Westphalen, Arch-marshall and Grand Elector of the Holy Roman Empire, Landgraf of Thuringen, Markgraf of Meissen, also of Upper and Lower Lausnitz, Burggraf of Magdeburg, Prince-grave of Huneburg, Graf of the Mark Ravensberg, Hanau and Barbey, Seigneur of Ravenstein.

His presently employed Horticulturist.

I, Johann Jeremias Alnger, do let it be known to each and all, of high or low Estate, especially to the honorable and skillful Gentlemen and workmen who practice the noble art of gardening, and to those whose pleasures tend in that direction, who may see and read this letter, that the bearer of this, Johann Caspar Öhlman, the legitimate and youngest son of Master Johann Heinrich Öhlman, beer-brewer of Bautzen, near Leipzig, has, in order to learn the art of horticulture and gardening, been taken, according to customs, in our service as apprentice for the term of three years, from November 1749 to November 1752.

He has not only served and passed the three years of apprenticeship, but during that time has been faithful, industrious, honest, obedient, pious, and has conducted himself as becomes a studious apprentice, and he has given me great satisfaction.

But he has resolved, with the aid of the Lord, to try his luck elsewhere, to perfect himself in the art he has learned from me, and has therefore kindly asked me for a testi-

monial of his advancement, which I could not refuse him: therefore, and for his future welfare, do I declare him, on this day, clear, free and released.

To all whom this letter may reach, I present my kind regards, and beg that they give full-credit to this my testimonium, to wit:

To grant Johann Caspar Öhlman, on account of his from me acquired art of gardening, and for his good behaviour, all encouragement and gracious good will and the best of testimonials, which favors he will, I hope, thankfully repay with faithful and diligent service. I shall always be ready to answer for him at any occasion to each and every one, and according to rank.

In witness thereof do I hereby affix to this, the apprentice indenture, my hand and seal.

Rendered at the Royal Garden of the Residence, Dresden, on the nineteenth of November of the year 1752.

The horticulturist to the noble and right honorable Sir, Mr. Geo. Bosen, renowned merchant of the world-famed commercial city of Leipzig.

I, Anton Mathias Hort, do let it be known to each and all in the land, of whatever station of life they may be, that the bearer, the honest and art-loving Johann Caspar Öhlman, gardener, born in Bautzen near Leipzig, has been in my employment for about seven months, during which time he has always been faithful and industrious. I should have been glad to allow him to remain in my service, had he not, for his welfare and ambition, wished to better (zevati viciter) himself in the praiseworthy art of horticulture, and to try other and better positions.

In this intention has he applied to me for a proper release of his services, and given communication of his departure, and I do, herewith, on account of his good behaviour, wish to further his welfare. So, should this release be shown to any one, whether of high estate or

low-born, especially anyone addicted to the art of gardening, or whose pleasures lean towards that art, I pray them not only to give full credit to this, but to show the fornamed Johann Caspar Öhlman all respect and favor, and to accord him all benefit to be derived through this, my recommendation, which favors he undoubtedly will thankfully and in all honor repay with ready service.

In witness thereof do I hereby affix my hand and seal.

Given in Leipzig in the year of our Lord one thousand seven hundred and fifty-three.

(Signed) Anton Matthias Hort."

According to family tradition, Öhlman was employed as gardener at Vaucluse, the Elams' country estate in Portsmouth. Of Vaucluse, Thomas R. Hazard (Shepherd Tom) in his *Recollections of Olden Times* (pages 91-92) said: "Nearly all the multitude of trees and shrubbery planted were imported by Mr. Elam from Europe," and added that Mr. Elam's account books "showed an outlay of about eighty thousand dollars on the building and ornamental portion of the estate alone."

The name Öhlman was spelled originally and in these manuscripts with an umlaut, but in Rhode Island the name eventually became changed to Ailman.

## Mielatz' Rhode Island Pictures

The following list of pictures by C. F. W. Mielatz, which relate to Rhode Island, has been compiled by Mr. G. Rothwell Burgess. An article on Mielatz' work was published in the *Providence Journal* of April 24, 1929.

Etchings

Along the Docks, Newport Harbor
Near the Nets, Newport
Early Morning, Newport

Trinity Steeple, Newport
Morning after the Storm, Newport
A Little Street in Newport
Newport Harbor, from Brenton Cove
Old Wreck in the Cove, Newport
Fishing Bridge, Newport
Old Boat Shop, Newport
Stranded, near Newport.
Steamboat Dock, Newport
The Village over the Hill, Narragansett
Evening, Silver Spring
The Haunt of the Hern
Across the Fields
The Passing Storm
A Narragansett Road
Winter Night
Narragansett Shore
Winter in Narragansett
Rock of the Unfortunate Hannah
The Miller's Home
Rainy Day, Providence
Fisherman's Home, Block Island
Swordfish Schooner, Block Island
Old Mill, Block Island
Falls of the Pawtucket River
Morning, Conanicut Island
Sunset, Newport Harbor
Swordfish Schooner, Block Island
A Mill at Block Island
Old Mill, near Newport, R. I.
First Flag, Colony of R. I.
Falls of Pawtucket
Olympia and ——, Newport, R. I.
Old Fish House, Newport Wharf
Old Dock, Newport

PAINTINGS

Bonita, off Block Island, R. I.
My Casting for Blue Fish, Narragansett Bay
Bridge for Bass Fishing, Narragansett Bay
Newport, R. I.
Along the Shore, Narragansett
Fisherman's House, Narragansett

# Notes

The following persons have been admitted to membership in the Society:

Rev. Clarence A. Barbour
Miss Alice Brayton
Miss Isabel R. Brown
Mr. S. Foster Damon
Mr. Robert F. Seybolt
William H. Vanderbilt
Mrs. Charles H. Merriman

*When Dickens Met Channing* and *A Glance at Channing's Friendships*, are the titles of two papers by Granville Hicks, which are based in part on letters preserved in the archives of the Rhode Island Historical Society. They are printed in *The Christian Register* of Boston for July 18, September 5 and September 12, 1929.

*Margaret Fuller as a Literary Critic*, by Helen Neill McMaster, is a monograph of 100 pages recently published by the University of Buffalo.

A letter of Joseph Wharton, dated Newport 1864, was printed in the *Bulletin of the Newport Historical Society* for October, 1929.

The diaries of two Newport mariners, Jonathan Barlow and Nicholas Simons, 1724-1725, dealing with their capture by pirates, which were edited by Robert F. Seybolt and printed in the *New England Quarterly* (II, 4), have been reprinted in pamphlet form.

An account of Gilbert Stuart as a Miniature Painter appears in the October, 1929, issue of *Antiques*.

On October 8, 1929, Professor Verner W. Crane of Brown University gave a talk before the Society on *Henry Marchant's Travels: A Rhode Islander in England on the Eve of the Revolution.*

Mr. Arthur H. Armington has compiled a typewritten

genealogy of the Armington Family, a copy of which he has given to the Society.

The Society has recently been fortunate in obtaining a manuscript orderly book of the Crown Point expedition of 1759. The book contains the name of "Samuel Stoneman Adjut". Samuel Stoneman was Lieutenant in Capt. Christopher Hargill's 10th Rhode Island Company in 1759 and Hargill's 5th Rhode Island company in 1760. He was adjutant in 1760 and perhaps in part of 1759.

Through the courtesy of Mr. Henry C. Dexter, the gravestone of Governor Joseph Jenckes has been placed in the Society's Museum.

A collection of eighteenth century manuscripts dealing with colonial Newport, has been given to the Society by G. Andrews Moriarty, Jr., F. S. A. Many of these papers relate to the privateersman, Capt. John Rouse, R. N.

On October 28, 1929, the Colonial Daughters of the Seventeenth Century, State of Rhode Island Society, dedicated a memorial boulder and tablet at Rumford, East Providence, commemorative of the founding of Rehoboth near that spot in 1644. The inscription reads: "Here Rev. Samuel Newman and Associates in 1644, Found Ample Place, 'Rehoboth', for Their Plantation. Near This Spot They Built Their First Church at the Centre of the 'Ring of the Town'. Destroyed by the Indians in 1676, Rebuilt and Enlarged Rehoboth Sent Its Children to Settle Other New England Towns, Making to the Life of the Nation Lasting Contributions Now Commemorated by This Stone and Tablet."

A typewritten volume containing copies of the inscriptions on gravestones in five cemeteries in Bristol, R. I., has been deposited with the Society by the Bristol Chapter, Daughters of the American Revolution. The transcripts were made over thirty years ago by James Augustus Mil-

ler, and the typewritten copy of them was made under the direction of Mrs. William Leonard Manchester.

*Newly Discovered Miniatures by Edward Greene Malbone* is the title of a profusely illustrated article by Ruel P. Tolman in the November, 1929, issue of *Antiques*.

The Society has recently issued a volume of 99 pages containing the *Minutes of the Convention held at South Kingstown, Rhode Island, in March, 1790, which failed to adopt the Constitution of the United States*, with an introduction by Robert C. Cotner and a foreword by Verner W. Crane. This volume will be of great interest to students of constitutional history.

The *Boston Sunday Globe* of September 8, 1929, contains a picture of the watch tower built on Block Island by Mr. Thomas T. Doggett to commemorate the location of the signal pole on Block Island.

The Georgiana Guild Genealogical Collection, consisting of the manuscript notes made by Miss Guild during her many years of research, will be a mine of inestimable value to genealogists. Through the kindness of her sister, Miss Olive Guild, this collection has been given to the Society, and is now available for use.

Two very thorough and detailed typewritten histories by Nicholas Ball have been presented to the Society by Mrs. Schuyler C. Ball One volume of 354 pages deals with the history and development of Block Island harbors from 1635 to 1896. The other volume of 66 pages is an account of the Block Island light houses, life saving stations and cable.

Mr. Thomas A. Jenckes and Mr. Stephen H. Jenckes have presented to the Society a collection of legal documents and printed briefs relating to Rhode Island cases, from the library of their grandfather, the late Thomas A. Jenckes.

The manuscript record book of the Proprietors of Little Compton, which contains an account of the land grants from 1673 to 1755 and so is the fundamental source book for the origin of land titles in Little Compton, has been photostated and the photostat copy placed in the Society's library. The Society is indebted to Mr. Henry I. Richmond for his generosity and for the hours of time he has spent in bringing this work to a successful culmination.

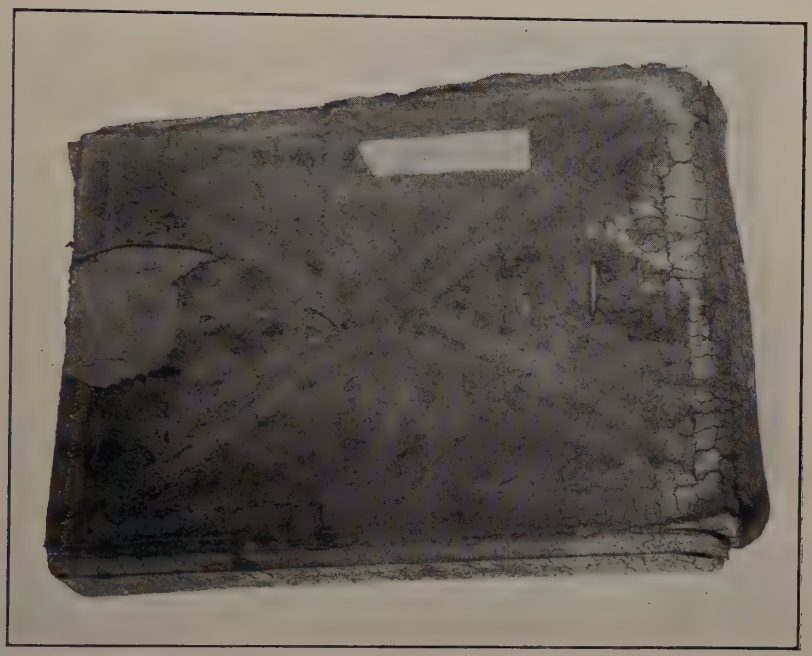
On December 10, 1929, Mr. John W. Haley gave a talk before the Society on *Historical Treasures of Rhode Island*, illustrated with lantern slides.

*The Political Thought of Roger Williams*, by James E. Ernst, is a volume of 230 pages, published in 1929 by the University of Washington Press at Seattle. An article on Roger Williams by Mr. Ernst appeared in the last issue of the *R. I. H. S. Collections.*

Through the courtesy of Mr. Charles M. Perry the Society has obtained a typewritten copy of the manuscript *History of Greene and Vicinity*, which was recently written by Squire G. Wood.

The Society has been fortunate in obtaining a copy of the *Lunar Calendar*, by Moses Lopez, which was published at Newport in 1806. It is the first Jewish almanac published in the State. The Society's file of *Newport Mercury Almanacs* still lacks a few issues between 1890 and 1911.

*Uncle By Gosh of Old South County*, by Jennie R. Partelow, was printed in Boston in 1929, and is the second book of hers relating to Rhode Island.



The box in which the commission for the inquiry into the burning of the Gaspee was sent to Governor Wanton. The box is still preserved in the State House at Providence.

*Courtesy of Howard W. Preston.*

## Captain Paine of Cajacet

*By* Howard M. Chapin

Captain Thomas Paine of Cajacet in Jamestown, mariner, buccaneer, soldier, patriot and churchman, is one of those picturesque swash-buckling privateersmen of the seventeenth century, who having made his pile, retired from the dangers and excitement of the sea, to spend his declining years on shore as a landed gentleman and a pillar of the Church of England. Why so many ex-pirates joined the Church of England has always seemed to be one of the unsolved mysteries of those romantic days.

Thomas Paine first appears in history in the year of Grace 1682 as captain of a bark and in command of a crew of eighty men. He had evidently been a-privateering on his own account without due papers and commission, but seems to have confined his activities to preying on Spanish commerce, or at least had that reputation. Thus it might be said that he carried on the best traditions of the buccaneers.

At this time the English government was trying to suppress buccaneering and the kindred trade of piracy in the West Indies, and many self-styled privateersmen finding that His Majesty's men-of-war interferred with their activities, became repentant and sought to give up their questionable calling and to take up the duties and obligations of respectable citizens. One Captain Clarke, who is called "a very honest useful man," approached Sir Thomas Lynch, then Governor of Jamaica, and pleaded on Paine's behalf. Lynch wrote, "He told me Payn had never done the least harm to any and that if I would allow him to come in, he would engage to bring in or destroy these other pirates. I thought this likely and advantageous from creating divisions among the pirates, so I accepted the offer and hope *per fas aut nefas* to put down these destructive rogues." This letter was written on November 9, 1682, and it is interesting to note that in this very letter, while referring to piracy and privateers, Sir Thomas mentions "particularly one Picard in a brigantine," whom we will hear of later.

From the context of Lynch's letter it would appear that he considered Paine was one of the throng of self-styled privateersmen who infested the West Indies and preyed on the Spaniards. Apparently the statement that "Payn had never done the least harm to any" should be taken advisedly, and meant that he had not preyed on English vessels or by his behavior involved England in international difficulties.

Captain Clarke was successful in his intercession on

Paine's behalf and the latter was allowed by Governor Lynch to "come in" to Jamaica, which was tantamount to freeing him from possible legal prosecution for past irregularities at sea.

Captain Paine was duly commissioned a privateersman by Sir Thomas Lynch on October 13, 1682, and was authorized to seize, kill and destroy pirates and their ships. Acting under this commission, Captain Paine sailed from Jamaica in the frigate *Pearl*, a ship of eight guns manned with sixty men.

In March, 1683, Captain Paine touched at the Bahama Islands and fell in with four sea captains of ill-repute: Captain Conway Woolley, Captain Markham, John Cornelison, commander of a brigantine from New York, and a noted pirate captain known under various names as Breha alias Brashaw alias Lavanza alias Michael Anderson. Captain Breha was at this time making preparations to sail on a voyage, which he alleged was for the purpose of fishing silver from a wrecked Spanish galleon.

Governor Lilburne of the Bahamas said that these captains entered into a conspiracy to take St. Augustine and sailed under the command of Captain Paine. Other less authentic reports state that Breha was in command, but these reports were doubtless due to the fact that Breha was more widely known. The five ships sailed under French colors and hoped to surprise St. Augustine, but to their discomforture found the Spaniards ready for them. Abandoning the idea of taking that city, they ravaged the outlying countryside, and plundered a number of small places. The expedition then broke up, a common occurrence among buccaneers, and Paine, Markham and Breha returned with their spoils to New Providence. Governor Lilburne immediately attempted to seize these ships, but failed through want of sufficient force.

Captain Paine, not finding New Providence hospitable, sailed away to a Spanish wreck, perhaps the one Breha had mentioned, and tried his luck at fishing silver out of the

old galleon. Governor Lilburne sent a strong force after Paine, but when this ship reached the wreck, Paine had sailed northward.

It was rather a convenience for the pirates of those days to occasionally go a-hunting sunken silver in ship-wrecked galleons, especially as such quests would account of quantities of plate in their cargo. On the other hand, wrecking expeditions often were able to do a little unsuspected piracy on the side, so to speak.

Captain Paine in his ship *Pearl* reached Narragansett Bay in the summer of 1683 ostensibly from looting a Spanish wreck. Samuel G. Arnold gives the date of arrival in a marginal note as July 30, but I have not succeeded in verifying this date. At any rate, the news of Paine's arrival had reached Boston by Wednesday, August 15, for on that date Thatcher, the Deputy Collector, set out for Newport for the purpose of seizing the *Pearl,* which he believed was an "unfree bottom." He arrived at Newport the next day, which he spent in satisfying himself "as to the character of the ship" as he expressed it. In the evening he called upon Governor William Coddington and demanded his assistance in seizing her. Governor Coddington put Thatcher off and agreed to take the matter up in the morning. Thatcher claimed that some one told the "pirates" of his plans, and that the delay of overnight gave Paine and his crew time to arm themselves so as to be able to resist arrest.

Early the next morning, Friday, August 17, Thatcher went to see Governor Coddington. The latter said that he had investigated the matter, and that the vessel was a "free bottom" not liable to seizure, for Captain Paine had a commission from Sir Thomas Lynch. A conference was then held, which was attended by Governor Dongan of New York, Governor Cranfield of New Hampshire, and Capt. Thomas Paine, as well as by Governor Coddington and Deputy Collector Thatcher. Captain Paine presented his commission, which Thatcher, Dongan and Cranfield

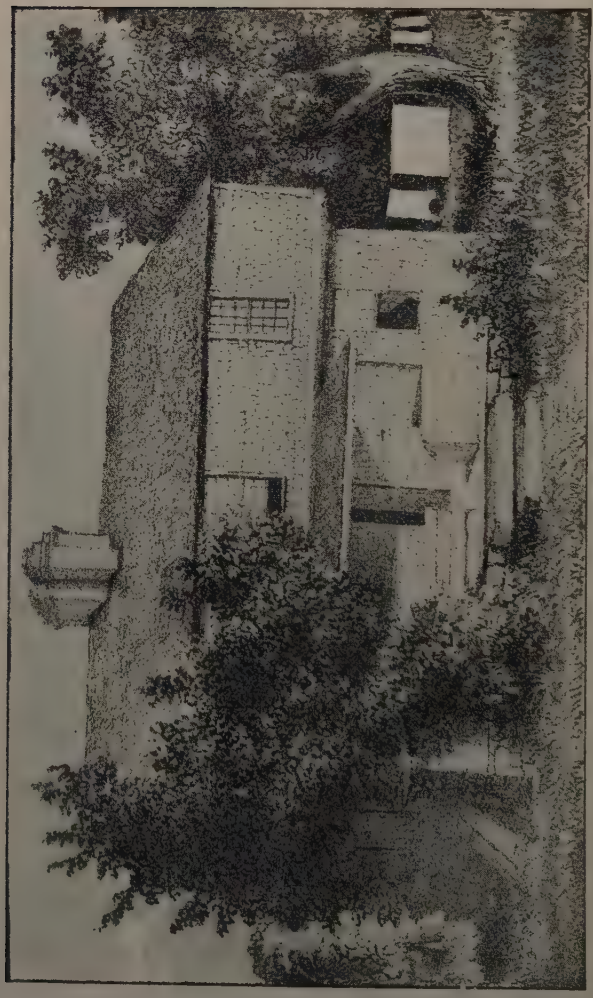
declared to be a forgery. Cranfield claimed that it was not Sir Thomas' signature, and the fact that Sir Thomas was styled one of the gentlemen of the King's Bedchamber instead of his Privy Chamber, also proved that the commission was forged.

Cranfield, Dongan and Thatcher represented the crown and, in this case as in others, their wishes seem to have led them to distort facts. Paine would have had little need to have forged a commission, when he already had one, as is proved by the letter of Sir Thomas Lynch already quoted. Governor Coddington, representing the rights of the colonists as against the tyranny of the Royal agents, accepted the commission as genuine, and would not seize the ship. The next day Thatcher again asked help of Governor Coddington, and the Governor told him to proceed against Paine in the court if he wished to do so. Thus matters rested for a while.

Paine settled at Newport, and apparently in the following year, 1684, was arrested on the charge of piracy. William Dyer, son of Mary Dyer, the Quaker martyr, and at this time a royal agent with ample powers, wrote on September 12, 1684: "I have also caused Captain Thomas Paine the arch-pirate, to be secured, and charged the Governor of Rhode Island with him and with his own neglect for not assisting the Deputy Collector to seize him and his ship." Captain Paine seems to have successfully extricated himself from these charges for he continued to reside in Rhode Island.

Thomas Paine married Mercy Carr, daughter of Judge Caleb Carr of Jamestown, but the date of the marriage is not now known, although it was probably in 1687/8. The Paines resided in Jamestown, and in 1688 Thomas Paine was drawn on the Grand Jury and served at the session held at Newport on December 11 of that year.

In July, 1690, Rhode Island was amply rewarded for giving shelter seven years earlier to Captain Thomas Paine. A fleet of French privateers arrived off the coast



Captain Thomas Paine's House at Conanicut, R. I.
*From Whitefield's "The Homes of our Forefathers."*

about July 12. The commander was a Captain Pekar or Picard, who is unquestionably identical with the buccaneer Pierre le Picard, whom Esquemeling mentions as deserting L'Ollonais, and with the Captain Picard, whom Sir Thomas Lynch described as a pirate in 1682. Newport and Jamestown were shocked by the news of the atrocities committed by these French privateers at Block Island and an attack upon Newport itself was feared. On July 17 the Governor and Council met, and in the emergency impressed into the colony's service the sloop *Loyal Stede* of Barbadoes, which happened to be lying in Newport harbor at this time. This sloop was armed with 10 guns, manned with 60 men and placed under the command of the veteran sea fighter, Captain Thomas Paine, who was more experienced in naval warfare than any other resident of Rhode Island. Captain John Godfrey was placed in command of another vessel, probably his own, and ordered to accompany the *Loyal Stede* and to act under Captain Paine's orders.

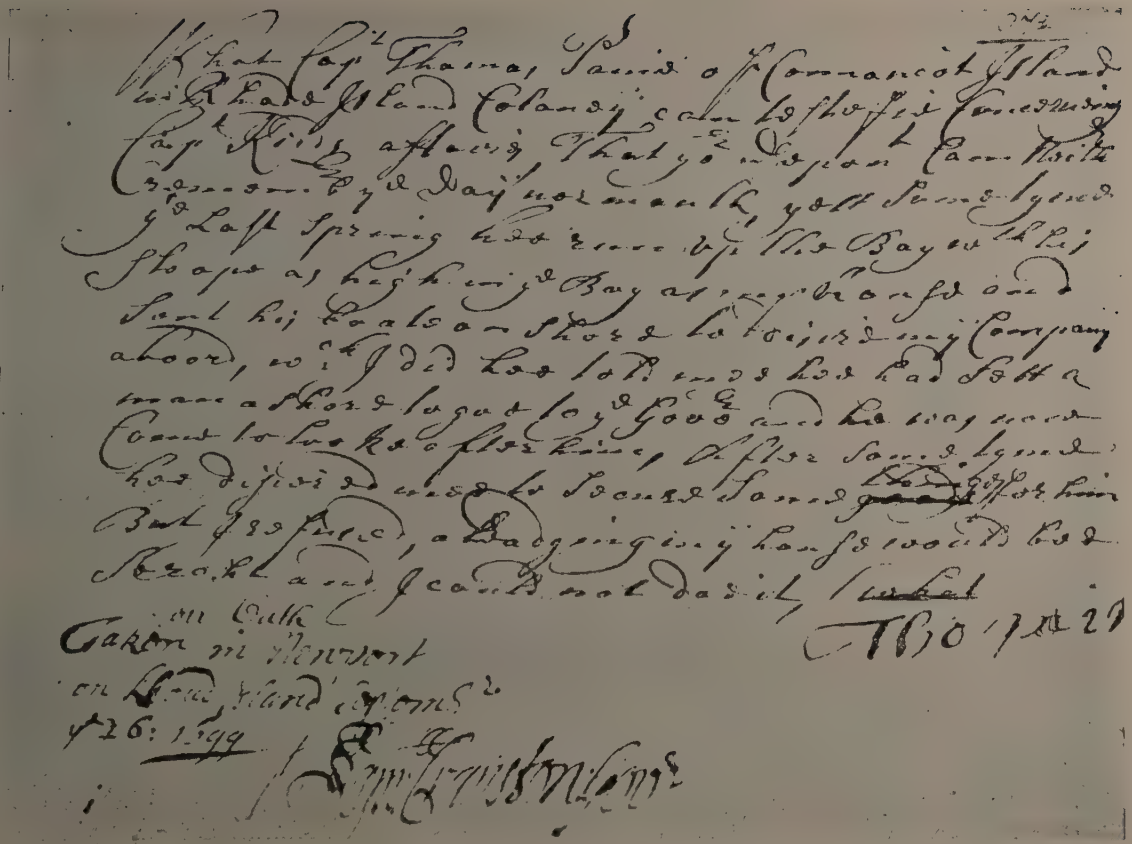
The achievements of this expedition are best told by an eye witness, Samuel Niles.

"Whilst these French privateers were making an attempt at New London, the people of Newport fitted out two vessels from thence with volunteers to engage them, supposing they were still at Block Island. These vessels were sloops, under the command of Captain and Commodore Paine, who had some years before followed the privateering design, and Captain John Godfrey, his second; and inquiring for the French, they were told, that when they left the island they shaped their course westward toward New London; upon which our English vessels stretched off to the southward, and soon made a discovery of a small fleet standing eastward. Supposing them to be the French they were in quest of, they tacked and came in as near shore as they could with safety, carrying one anchor to wear and another to seaboard, to prevent the

French boarding them on each side at once, and to bring their guns and men all on one side, the better to defend themselves and annoy the enemy. The French probably discovered them also, and made all the sail they could, expecting to make prizes of them. Accordingly they sent a periauger before them, full of men, with design to pour in their small arms on them, and take them, as their manner was, supposing they were unarmed vessels and only bound upon trade. Captain Paine's gunner urged to fire on them. The Captain denied, alleging it more advisable to let the enemy come nearer under their command. But the gunner still urging it, being certain (as he said) he should rake fore and aft, thus with much importunity at length the Captain gave him liberty. He fired on them but the bullet went wide of them, and I saw it skip on the surface of the water several times, and finally lodge in a bank, as they were not very far distant from the shore. This brought them to a stand and to row off as fast as they could and wait until their vessels came up. When they came, they bore down on the English, and there ensued a very hot seafight for several hours, though under the land, the great barque foremost, pouring in a broadside with small arms. Ours bravely answered them in the same manner, with their huzzas and shouting. Then followed the larger sloop, the captain whereof was a very violent, resolute fellow. He took a glass of wine to drink, and wished it might be his damnation if he did not board them immediately. But as he was drinking, a bullet struck him in his neck, with which he instantly fell down dead as the prisoners (before spoken of), afterward reported. However, the large sloop proceeded, as the former vessel had done, and the lesser sloop likewise. Thus they passed by in course, and then tacked and brought their other broadside to bear. In this manner they continued the fight until the night came on and prevented their farther conflict. Our men as valiantly paid them back in their own coin, and bravely repulsed them, and killed several of them. The

Captain, before spoken of, with one or more were afterwards driven on the shore. In this action the continued fire was so sharp and violent, that the echo in the woods made a noise as though the limbs of the trees were rent and tore off from their bodies (as I have observed); yet they killed but one man, an Indian fellow of the English party, and wounded six men, who after recovered. They overshot our men, so that many of their bullets, both great and small, were picked up on the adjacent shore.

"Our men expected a second encounter in the morning, and their ammunition being much spent, sent in the night for the island's stock, as the French lay off at anchor but a small distance from them all night. But having found the engagement too hot for them, they hoisted their sails and stood off to sea; and one reason might be this (as was reported) that their Commodore understood by some means that it was Captain Paine he had encountered, said, 'He would as soon choose to fight the devil as with him.' Such was their dialect. Now this Captain Paine, and Peckar, the French Commodore, had sailed together a-privateering, Paine captain, and Peckar his lieutenant, in some former wars. The French standing off to sea, Captain Paine and Captain Godfrey, and their soldiers, with the valor and spirit of true Englishmen, pursued them, but the privateers being choice sailors, were too light of foot for them. The French, finding that they hauled on the vessel before spoken of, loaded with wines and brandy, which was not so good a sailor as the others, and fearing the English would make a prey of her, fired a great shot through her bottom, so that when our men came to her she was sunk under water in her fore part, the stern alone buoyed up by a long-boat fastened to it; and as she was standing right up and down in the water, they could not get anything out of her. They no sooner cut the painter, but she instantly sunk to the bottom. They brought the boat with them in their return, which was the only prize and trophy of their victory; only as the enemy



Captain Thomas Paine's deposition in regard to the famous Captain Kidd, with Captain Paine's signature.

*From original in Massachusetts Archives.*

were vanquished, and that they had so courageously chased them off the New England coast. When Peckar heard that Trimming was killed, he greatly lamented, and said, he had rather have lost thirty of his men."

Captain Paine was accompanied on this expedition by his father-in-law, Caleb Carr, and by his wife's brothers, Nicholas Carr and Samuel Carr.

On September 16, 1690, Captain Thomas Paine and his father-in-law, Caleb Carr, were appointed tax assessors for Jamestown, and were at this time residents of Jamestown. Two years later, in 1692, the town of Jamestown neglected to choose its militia officers, and the General Assembly on August 2 appointed Thomas Paine captain of the Jamestown Militia.

Captain Paine's father-in-law, Caleb Carr, was elected Governor of the Colony, and took up the duties of his office in May, 1695. Thomas Paine is supposed to have built the house, which is still standing though considerably remodeled, on the estate called Cajacet on the east shore of Conanicut Island near its northerly end. The Paines resided in this house for many years.

On May 3, 1698, Captain Paine was admitted a freeman, that is, an enfranchised voter of the colony. It is extraordinary that Paine should have served on the jury and been captain of the militia several years before he was a citizen of the colony.

On Thursday, June 15, 1699, the famous pirate, Capt. William Kidd, returning from his ill-fated cruise, dropped anchor in Rhode Island harbor, as Narragansett Bay was then called. The Collector, in a boat with thirty well-armed men, went out from Newport to seize Captain Kidd's vessel, but Kidd fired two great shots and the Collector withdrew.[1]

Kidd then sailed up the bay as far as Captain Paine's

[1]See R. I. H. S. C. XV, 97.

house and anchored off Conanicut. He sent his boat ashore with an invitation to Captain Paine to come and see him. Paine accepted Kidd's invitation and went aboard the sloop. It was rumored that at this time Kidd turned over a lot of gold to Captain Paine.

On July 18, 1699, Sarah Kidd, the Captain's wife, wrote a letter to Captain Paine asking him to deliver to the bearer, Andrew Knott, twenty-four ounces of gold "and to keep all the rest you have in custody for it is all we have to support us in time of want." This Andrew Knott later deposed that at this time he went with this letter from Boston to Conanicut and that Captain Paine delivered the gold to him. These facts, however, were unknown to the Earl of Bellomont when he visited Newport on September 29, 1699. He wrote of this visit, "While I was at Rhode Island I sent for one Pain, a pirate that has bought an estate on Conanicut Island under the Government of Rhode Island and has lived there some years; hearing that he had been on board Kidd's sloop, while he lay at anchor by Rhode Island, and it being reported that Kidd left some goods and treasure with him, I told him he must be examined on oath what he knew of Kidd and had received of him. He told me three or four several times he would not swear on any account whatsoever. I told him he must then go to gaol and he swore that Kidd had delivered no goods or treasure to him, but everybody that was present took notice that his behaviour was extremely disordered and I fancy believed as well as I that he did not swear nice truth." It must be remembered that Bellomont's testimony was strongly ex-parte and that he had a reputation for distorting facts to suit his own purposes.

Bellomont evidently referred to Paine's deposition of September 26, 1699, which is still extant. In it Paine deposed that Kidd desired him "to secure some things for him." Paine added, "But I refused alleging my house would be searched and I could not do it."

While at Newport at this time, Bellomont was presented a petition, signed by Capt. Thomas Paine and fifteen others, asking that a church of England be established at Newport. This was the beginning of the historic Trinity.

Some two months later Bellomont records that while searching Captain Knott's house, a small trunk was found which contained some remnants of East India goods and a letter from Mrs. Kidd to Captain Paine. This letter we have already referred to. Bellomont forthwith had Captain Knott examined and he deposed that "he fetched the gold for Kidd from Capt. Thomas Payne on Connonicut Island." Bellomont then "posted away a message to Governor Cranston and Col. Sanford to make a strict search of Paine's house before he could have notice. It seems nothing was then found, but Paine has since produced eighteen ounces and odd weight of gold, as appears by Governor Cranston's letter of November 25 and pretends twas bestowed on him by Kidd, hoping that may pass for a salvo for the oath he made." The Earl adds, "I think 'tis plain he foreswore himself and I am of the opinion he has a great deal more of Kidd's goods still in his hands. He is out of my power and being in that government I cannot compel him to deliver up the rest." Here the matter seems to have ended save for subsequent rumors in regard to buried treasure.

Thomas and Mercy Paine lived quietly for many years at their home at Cajacet. In 1706 during Queen Anne's War, Captain Paine was again called upon to serve his country. On June 2 of that year an emergency expedition, consisting of two ships and 120 men, was sent in pursuit of a French privateer commanded by Captain Charles Ferret of Petit Goave. This expedition was commanded jointly by Major William Wanton and Capt. Thomas Paine, now an old man, but invaluable on account of his experience. The French privateer was captured and brought into Newport as a prize on June 6.

Captain Paine made his will on June 28, 1714, and died the following spring, 1715. The will was probated May 17, 1715, and in it Paine mentions his three nephews, John Paine of Newport and his brothers, Thomas Paine and Samuel Paine, the sons of Captain Paine's brother, Andrew. Captain Paine left a ring to his friend, Capt. Thomas Newton of Bristol, and left the residue of his estate to his widow. They had no children.

It would be interesting to know if Capt. Thomas Newton of Bristol is identical with the Thomas Newton who was for many years Attorney General of Massachusetts, and if so, if this friendship had been of assistance to Captain Paine in extricating him from the legal difficulties resulting from his buccaneering enterprises.

The widow, Mercy Paine, signed a deed on May 16, 1716, and died in 1717. The day of the month was the 12th, but the name of the month is obliterated in the record.

The Paines were doubtless buried on their farm on Conanicut Island.

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Mr. George T. Paine, at one time President of the Rhode Island Historical Society and an authority on the genealogy of the Paine family, sought to identify our Captain Thomas Paine with the Thomas Paine of Marthas Vineyard who was born on February 8, 1632, and was fifteen years of age in 1647. This youthful Thomas Paine of Marthas Vineyard was son of Thomas Paine, merchant of London, lately deceased, and held lands and tenements in Whittlebury in Northamptonshire. His mother, the widow Jane Paine, married Thomas Mayhew, Governor of Marthas Vineyard, and on October 14, 1647, young Thomas chose them as his guardians. This Thomas Paine had a sister Jane, who married her step-brother, Thomas Mayhew, Junior, and if this Thomas Paine is identical with Thomas, the buccaneer, he must also have had a brother Andrew. In November, 1647, the business affairs of young Thomas Paine were turned over to the care of Capt. Robert Harding and Mr. Samuel Shepheard. Thomas disappears from Marthas Vineyard, and may well have gone to sea and turned privateersman.